IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9336 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHARWAD MERABHAI JALABHAI

Appearance:

1. Special Civil Application No. 9336 of 2001

MR KAMAL TRIVEDI Ld. A.A.G. with MS SANGEETA VISHEN for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 27/08/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has

challenged the judgment and award of the Labour Court dated 24th November, 2000 in Reference [L.C.S.] No. 165 of 1993 whereby the Labour Court has directed the petitioner to reinstate the respondent-workman on his original post with 25% backwages.

2.0. The short facts as they emerge from the record of the petition are that the respondent-workman was at the relevant time working as daily wager on a monthly salary of Rs.500=00 per month. It is the case of the respondent-workman that he had continuously worked for seven years with the petitioner. It is the say of the respondent-workman that vide order dated on 20th December, 1992, he was relieved from the service without any notice pay and without following the due procedure. It is further the say of the respondent-workman that no seniority list is maintained and juniors to him are retained in service by the petitioner.

2.1. In view of that the respondent-workman raised industrial dispute, which was ultimately, referred to the Labour Court for adjudication being Reference [L.C.S.] No. 165/1993, whereby the Labour Court had directed the petitioner to reinstate the respondent-workman on his original post with 25% backwages. Hence, this petition.

3.0. Heard Ms. Sangeeta Vishen learned advocate appearing for the petitioner. Though served, none appeared on behalf of the respondent-workman.

3.1. It is contended on behalf of the petitioner that though before the Labour Court it has been specifically contended that every department of the Government is not an "Industry" and they are not governed under the Industrial Disputes Act, the Labour Court has not considered the said aspects. It is further contended that in view of the decision of the Full Bench in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat reported in 2004 (2) G.L.H. 302, in para 29, it has been held as under :-

> "29. The inquiry into the nature of the work undertaken by the department in a particular venture, the type of agency through which the work is done, the duties of the employees and matters connected therewith, would all be the questions of fact. It is on the basis of the factual data relating to the undertaking and its work that the question whether such entity is industry

> or not, can be decided. The question of industry on the basis of the facts established would be a question of law. It will thus be seen that the point as to the jurisdiction of the industrial forum is not a pure question of law, but a mixed question of law and facts. As held by the Supreme Court in Bengal Nagpur Cotton Mills Ltd. v. J. Bastian reported in AIR 1960 S.C. 1110 where there is an industrial dispute, it is generally necessary that points of such importance should be raised before the original Industrial Court."

3.2. Looking to the peculiar facts and circumstances of the case and in view of the aforesaid decision, I find force in the submission of the learned advocate for the petitioner. Under the circumstances, for deciding the issue with regard to triple test, as laid down in the aforesaid decision, the Labour Court is the competent forum and it would be appropriate to remand the matter to the Labour Court to decide the issue afresh after taking into consideration the aforesaid aspects.

4.0 In view of the above, the petition is partly allowed. The award of the Labour Court dated 24th November, 2000 in Reference [L.C.S.] No. 165 of 1993 is required to be quashed and set aside.

4.1. Therefore, in the interest of justice, the following order is passed.

4.2. The award of the Labour Court dated 24th November, 2000 in Reference [L.C.J.] No. 165 of 1993 is quashed and set aside. The matter is remanded to the Labour Court for fresh decision. The Labour Court shall decide the issue afresh keeping in mind the ratio laid down by the Full Bench in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat (supra) on or before 31st December, 2004. It is however, made clear that if the respondent-workman is not reinstated in service, the petitioner shall pay last drawn wages as per the provisions of Section 17-B of the Industrial Disputes Act, till the Reference is decided by the Labour Court and the arrears for the period from 24th November, 2000 till 31st August, 2004 shall be paid within a period of one month. It is also made clear that the petitioner shall regularly pay last drawn wages on 10th of every month to the respondent-workman.

[K.S. JHAVERI, J.]

/phalguni/